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भारत निर्वाचन आयोग

अधिसूचना

नई दिल्ली, 18 मार्च, 2015

आ.अ.18(अ).—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106(क) के अनुसरण में, भारत निर्वाचन आयोग वर्ष 2014 की निर्वाचन याचिका सं. 5 में केरल उच्च न्यायालय के दिनांक 27.01.2015 के आदेश को एतद्वारा प्रकाशित करता है।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/केरल-लोक सभा/5/2014]

आदेश से,

तपस कुमार, वरिष्ठ प्रधान सचिव

ELECTION COMMISSION OF INDIA

NOTIFICATION

New Delhi, the 18th March, 2015

O. N. 18(E).— In pursuance of section 106(a) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Kerala dated 27.01.2015 in Election Petition No. 5 of 2014.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 27TH DAY OF JANUARY 2015/7TH MAGHA, 1936

El. Pet. No. 5 of 2014

PETITIONER(S):

NOBLE MATHEW, AGED 52 YEARS,
S/O. LATE M.D. MATHEW, MANNAMPLACKAL HOUSE,
CHIRAKKADAVU P.O., KOTTAYAM DISTRICT- 686 520.

BY ADVS.SRI.SANTHEEP ANKARATH
SRI. ARUN MATHEW VADAKKAN
SRI. Y. JAFAR KHAN

RESPONDENT(S) :

1. **SRI. JOSE K. MANI, AGED 49 YEARS, S/O. K. M. MANI, KARINGOZHAEKAL, VELLAPPAD, PALA P.O, KOTTAYAM DISTRICT- 686 575.**
2. **ADV. MATHEW T. THOMAS, AGED 52 YEARS, S/O.REV.FR.THOMAS, THOOMPANPATTA HOUSE, KUTTAPUZHA P.O., THIRUVALLA- 689 103.**
3. **ADV.ANIL AIKKARA, AGED 40 YEARS, S/O.RADHAKRISHNAN NAIR, AIKARAPARAMBIL, TELLAKAM P.O, KOTTAYAM- 686 016.**
4. **SREENI K.JACOB, AGED 41 YEARS, S/O. JACOB, KAMBALAYIL HOUSE, PAKKIL P.O., KOTTAYAM- 686 012.**
5. **SRI.ROY ARAKKAL, AGED 45 YEARS, S/O. JOSEPH, ARAKKAL HOUSE, KODIKUTHAMALA ALUVA-683101**
6. **SRI. N. K. BIJU, AGED 46 YEARS, S/O.KAMALASANAN, NADUVATHUSSERIL, SAJIVOTHAMAPURAM P.O, KOTTAYAM- 686 532.**
7. **SRI.RATHEESH PERUMAL, AGED 27 YEARS, S/O. RAVEENDRAN, THARAGATTI HOUSE, PATTANAKKAD P.O, SHERTHALAI, ALAPPUZHA DISTRICT- 688 531.**
8. **SRI.JAMES JOSEPH, AGED 47 YEARS, S/O.JOSEPH, PEZHUMKATTIL, THIDANADU P.O., KOTTAYAM- 686 575.**

El. Pet. No. 5 of 2014

9. **SRI. SASIKUTTAN VAKATHANAM, AGED 58 YEARS, S/O. SHANKARAN, ASHARIPARAMBIL, VAKATHANAM P.O., KOTTAYAM- 686 538.**
10. **SRI. PRAVIN R. MOHAN, AGED 37 YEARS, S/O. K.MOHANDAS, BYNU BHAVAN, VELLASSERY KARA, KADUTHURUTHY P.O., KOTTAYAM-686 604.**

R1 BY SRI. S. SREEKUMAR (SENIOR ADVOCATE)
ADVS. SRI. P. MARTIN JOSE
SRI. P. PRIJITH
SRI.THOMAS
SRI P.KURUVILLA
SRI. SUJITH MATHEW JOSE
SRI. CYRIAC KURIAN
SRI. CYRIAC IYPE

THIS ELECTION PETITION HAVING BEEN FINALLY HEARD ON 07-01-2015, THE COURT ON 27-01-2015 DELIVERED THE FOLLOWING:

[CR]

B. KEMAL PASHA, J.

.....
Election Petition No. 5 of 2014
.....
Dated this the 27th day of January, 2015

J U D G M E N T

Can there be more than one Election Agent for a candidate at an election? The question of maintainability has been seriously in issue in this election petition and therefore, the same has been heard as a preliminary issue.

2. The petitioner was one of the candidates in No. 14 Kottayam Parliamentary Constituency for the Lok Sabha Election held on 10.04.2014, the result of which was declared on 16.05.2014. The petitioner contested the election as an independent candidate with the support of the National Democratic Alliance(NDA). The first respondent was the candidate sponsored by the Kerala Congress(M), a State party. On 16th May, 2014, the first respondent was declared to have been elected having secured the majority of votes.

3. According to the petitioner, the election of the first respondent declared on 16.05.2014 is liable to be declared as void and set aside under Section 100(1)(b) of the Representation of the People Act, 1951(hereinafter referred to as 'the Act') read with Section 123(1) of the Act.

4. The case of the petitioner is that Sri. Thomas Chazhikkadan, former MLA, was the Chief Election Agent of the first respondent. Sri. Mons Joseph was also one of the Election Agents, and similarly Sri.Tomy Kallani was another Election Agent of the first respondent. According to the petitioner, all the aforesaid three persons fall within the expression of "Agent" under the Explanation to Section 123(8) of the Act, as they have acted as agents in connection with the election of the first respondent, with the consent of the first respondent and Sri. Thomas Chazhikkadan who was the Chief Election Agent of the first respondent.

5. According to the petitioner, the Chief Minister of Kerala Sri. Oommen Chandy was the main Election Agent on behalf of the candidates sponsored by the United Democratic Front (UDF) in the State. As a prominent Congress leader, whose party was leading the UDF, Sri. Oommen Chandy was campaigning vigorously for all the UDF candidates throughout the State. In the Assembly Constituencies of Kaduthuruthy, Ettumanoor and Kottayam a section of the voters had organized themselves as "*Athivega Rail Virudha Janakiya Samithy*" and had taken a decision around February, 2014 to boycott the Parliament election as a whole. They had published leaflets and posters exhorting the voters of the Kottayam Parliamentary Constituency to boycott the election, and erected flex boards to that effect. Since the boycott was likely to affect the voting pattern and the prospects of the first respondent being the UDF candidate in the Constituency, a plan was hatched to make the Chief Minister who was campaigning on behalf of the UDF candidates to specifically address the meetings in parts of Ettumanoor and Kaduthuruthy Assembly segments. In the said meetings at the said Assembly segments, in the presence of the election agents of the first respondent and with their consent, approval and appreciation, Sri. Oommen Chandy, who is the Election Agent of the first respondent made an offer and promise to the voters that as a gratification and reward for them to participate in the voting and to vote for the 1st respondent, it was decided to cancel the proposed high speed rail between Thiruvananthapuram and Kasaragod. According to the petitioner, the above was the main plank in his speeches, particularly in Kaduthuruthy and Ettumanoor segments.

6. In paragraph 6 of the election petition it has been pleaded as follows:

> *"When the Chief Minister was making the speeches, three election agents of the 1st respondent namely Sri.Mons Joseph, Sri.Thomas Chazhikkadan and Tomy Kallani all actively involved in the election campaigning of the 1st respondent in different areas and were the election agents of the 1st respondent were present in the meeting and they made gestures in appreciation and in recognition of the speech made by the Chief Minister that the high speed train proposal will be called off and the voters should therefore end the boycott. This offer and promise by the Chief Minister who himself was one of the election agents of the 1st respondent amounted to gratification of the voters with a view to vote in favour of the 1st respondent and therefore, amounted to a corrupt practice as the said expression is defined in Section 123(1)A of the Representation of the People Act. The offer and promise by the Hon'ble Chief Minister who himself was an election agent and who made the offer in the presence of the election agents of the 1st respondent referred to above and with their consent was with the object of directly or indirectly inducing the electors of the concerned area to vote in the election and amounted to receiving such a gratification as a motive or reward for voting by the voters of Kottayam Parliamentary Constituency. The Chief Minister made the statement not only with the consent and knowledge of the election agents of the 1st respondent aforesaid but with their open approval and appreciation as they were seen clapping their hands in joy when the Chief Minister announced the statement in the meeting, clearly evidencing that the gratification rendered by the Chief Minister was with the consent of the Election agents of the 1st respondent thereby attracting the vice of Section 123. It may be stated here that the high speed train project had been approved by the Kerala Cabinet long back and on the date when the Hon'ble Chief Minister made the aforesaid offer, promise amounting to gratification on the 30th of March, 2014 and 2nd April, 2014 at the time specified below, there had been no decision at all taken by the Cabinet to cancel the project."*

7. Therefore, the specific case of the petitioner with regard to the corrupt practice within the meaning of Section 123(1) of the Act is that the speech allegedly made by the Chief Minister of Kerala Sri. Oommen Chandy on 30.03.2014 and 02.04.2014 will amount to gratification to the voters and that the said speeches were made in the presence of the Election Agents of first respondent, with the knowledge, consent and approval of the Election Agents of the first respondent, and further that Sri. Oommen Chandy himself was an Election Agent of the first respondent. It is also the case of the petitioner that the statement of the Election Agent of the first respondent Sri. Mons Joseph with regard to the above gratification has been published in the *Malayala Manorama* daily dated 04.04.2014, the copy of which is Annexure G.

8. The aforesaid ground has been taken as 'Ground A' in the election petition which reads as follows:

> *"The declaration of the result of the election of the 1st respondent as the duly elected candidate from No.14 Kottayam Parliamentary Constituency by the Returning Officer made on 16.05.2014 is liable to be declared void, unenforceable and set aside on account of the corrupt practice committed with the consent and knowledge of the election agents of the 1st respondent Sri.Mons Joseph, Sri.Tomy Kallani and his Chief Election Agent Sri.Thomas Chazhikkadan in Kaduthuruthy junction held on the 30th of March, 2014 shortly after 4 PM, and in the meeting in Neendoor in Ettumanoor on 02.04.2014 at about 6 PM, by the Hon'ble Chief Minister Sri. Oommen Chandy who is also an election agent of the 1st respondent in terms of the definition of the expression 'agent' under the explanation to Section 123 of the*

Representation of the People Act by making a false offer and promise as gratification to the electors of the No. 14 Kottayam Parliamentary Constituency belonging to the Ettumanoor and Kaduthuruthy Assembly Segments that the proposal to construct a high speed rail is being abolished solely with a view to induce the voters to vote for the 1st respondent and with that direct and indirect object by offering that promise and with a request that the proposal to boycott by some voters of the election in the area shall be withdrawn. The aforesaid conduct of the Chief Minister in the presence of the election agents of the 1st respondent at the time, place and date stated above constitutes a corrupt practice under Section 100(1)(b) of the Representation of the People Act and liable to be declared so. The election agents of the 1st respondent who were present at the meeting not only consented to the speech of the other election agent the Chief Minister, but approved, recognised, applauded and appreciated the speech even by clapping their hands. The aforesaid conduct of the election agents of the 1st respondent who had consented to the commission of such corrupt practice and the commission of the same by Sri. Oommen Chandy is sufficient to invalidate the election of the 1st respondent from the No.14 Kottayam Parliamentary Constituency. The speech by Sri. Oommen Chandy had been heard by several voters in the constituency who were present in the meeting and could identify all the speakers by face, the details of which have been furnished earlier in the petition. The petitioner therefore, respectfully submits that the election of the 1st respondent from No.14 Kottayam Parliamentary Constituency is liable to be declared void, unenforceable and set aside on account of the commission of the aforesaid corrupt practice committed by one of the election agents of the 1st respondent Sri.Oommen Chandy, the Hon'ble Chief Minister under Section 100(1)(b) of the Representation of the People Act, 1951. The election of the returned candidate, namely Sri. Jose K Mani, the 1st respondent, therefore, is liable to be declared void and this Hon'ble Court may be pleased to do so."

9. It is specifically on the aforesaid ground that the petitioner has sought for a declaration that the election of the first respondent from the No. 14 Kottayam Parliamentary Constituency to the Lok Sabha declared on 16.05.2014 as void under Section 100(1)(b) read with Section 123(1) of the Act.

10. Heard the learned Senior Counsel Sri. S. Sreekumar for the first respondent who has vehemently challenged the maintainability of the election petition, and Sri. Santheep Ankarath, the learned counsel for the election petitioner.

11. The learned Senior Counsel for the first respondent Sri.S. Sreekumar has canvassed an argument that there cannot be more than one election agent for a candidate and the case forwarded by the petitioner that the first respondent had four election agents namely Sri. Thomas Chazhikkadan, Sri. Mons Joseph, Sri. Tomy Kallani and Sri. Oommen Chandy, is false and without *bonafides*. It is also argued that even the petitioner has no case that the speeches allegedly made by Sri. Oommen Chandy thereby promising the withdrawal of high speed railway project on 30.03.2014 and 02.04.2014 were made with knowledge and consent of the first respondent or in the presence of the first respondent. It is also argued that the only case of the petitioner is that the said speeches were made by Sri.Oommen Chandy as an Election Agent of the first respondent with the knowledge, consent and approval of the three other 'Election Agents' of the first respondent. It is further argued that the specific pleadings with regard to the details of the alleged corrupt practice, if at all committed, are also lacking in the election petition and therefore, the election petition lacks any cause of action which renders it to be rejected. Further, the election petition as such is not maintainable for want of sufficient and specific pleadings regarding any such 'corrupt practice', as per Section 83 of the Act.

12. *Per contra*, the learned counsel for the petitioner has argued that there are sufficient pleadings to constitute 'corrupt practice' within the meaning of Section 123(1) of the Act and the petitioner will be able to prove such corrupt practice by adducing concrete evidence and therefore, the election petition is perfectly maintainable.

13. The learned Senior Counsel for the first respondent has argued that the petitioner has forwarded a strange case that the first respondent had four 'Election Agents' of his own in the said election. In paragraph 3 of the Election Petition it has been averred that Sri. Thomas Chazhikkadan was the 'Chief Election Agent', Sri.Mons Joseph was also one of the other Election Agents, and similarly Sri. Tomy Kallani was another Election Agent of the first respondent. It has been averred that all the three of them fall within the expression "Agent" under the Explanation to Section 123(8) of the Act. In paragraph 4 of the Election Petition it has been further averred that Sri. Oommen Chandy was the 'main election agent' of the candidates sponsored by the UDF in the State and he was an 'Agent' of the first respondent also within the meaning of Explanation to Section 123(8) of the Act. In paragraph 6 of the election petition it has been specifically pleaded that the Chief Minister Sri.Oommen Chandy had made the offer in question by way of gratification while addressing the meetings in Ettumanoor and Kaduthuruthy Assembly Segments, in the presence of the Election Agents of the first respondent and with their consent, approval and appreciation. It has not been pleaded that the said offer allegedly made by Sri.Oommen Chandy was made in the presence of the first respondent or with the consent, approval and appreciation of the first respondent. It has been further averred in paragraph 6 of the election petition that the said offer and promise was made by the Chief Minister, and that the Chief Minister himself was an 'Election Agent'

of the first respondent. It has been averred that in Kaduthuruthy meeting at 4 p.m. on 30.03.2014, the Chief Minister, Sri.Mons Joseph and Sri.Tomy Kallani were present and that in the Neendoor meeting at 6 p.m. on 02.04.2014, the Chief Minister and Sri.Thomas Chazhikkadan were present. It has not been pleaded that the first respondent was present in any of the said meetings.

14. It is also pointed out by the learned Senior Counsel for the first respondent that the pleadings by which corrupt practice has been alleged is one contained in ground A of the election petition, which is to the effect that the said corrupt practice was committed with the consent and knowledge of the election agents of the first respondent Sri.Mons Joseph, Sri.Tomy Kallani and the Chief Election Agent Sri.Thomas Chazhikkadan at Kaduthuruthy junction on 30.03.2014, shortly after 4 p.m. and in the meeting in Neendoor in Ettumanoor on 02.04.2014 at 6 p.m. by the Hon'ble Chief Minister Sri.Oommen Chandy, who is also an Election Agent of the first respondent. It is also averred that the Election Agents of the 1st respondent who were present at the meeting not only consented to the speech of the other election agent the Chief Minister, but approved, recognized, applauded and appreciated the speech even by clapping their hands. It is also averred that the said corrupt practice committed by one of the election agents of the first respondent Sri.Oommen Chandy, the Hon'ble Chief Minister, has rendered the election of the first respondent void.

15. Section 100(1)(b) of the Act says:

> *"100. Grounds for declaring election to be void-*
>
> *[(1) Subject to the provisions of sub-section (2)-*
>
> > *(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;"*

16. Therefore, such a corrupt practice should be committed by the returned candidate, or his election agent or by any other person with the consent of the returned candidate or his election agent. Here, in this case, the allegation is that such an offer by way of gratification was made by Sri.Oommen Chandy, who is one of the election agents of the first respondent and that the same was made with the consent of the other three election agents of the first respondent. It has not been pleaded that any such corrupt practice was committed by the first respondent or with the consent of the first respondent or in the presence of the first respondent.

17. The learned Senior Counsel for the first respondent has argued that a candidate at an election can appoint in the prescribed manner *"any one person other than himself to be his election agent"* and that a candidate cannot appoint more than one election agent. Section 40 of the Act reads:

> *"S40. Election agents: A candidate at an election may appoint in the prescribed manner any one person other than himself to be his election agent and when any such appointment is made, notice of the appointment shall be given in the prescribed manner to the returning officer."*

18. Therefore, it is evident from the wordings of Section 40 that a candidate can appoint *"anyone person other than himself to be his election agent"*. The learned Senior Counsel has argued that it has not been specifically pleaded in the election petition as to who was the election agent appointed by the first respondent at the election. It cannot be said that the petitioner did not know as to who was the election agent of the first respondent at the election. The petitioner, who was one of the candidates, cannot be heard to say that he was unaware of the identify of the person who was appointed as election agent by the first respondent at the election. When such an appointment is made, notice of the appointment shall be given in the prescribed manner to the Returning Officer. The petitioner could have very well collected the information as to who was the election agent appointed by the first respondent. Instead of specifically pleading the identify of the correct person who was appointed as the election agent of the first respondent, it seems that the petitioner has chosen to make a vague allegation and averment that Sri.Thomas Chazhikkadan, Sri.Mons Joseph, Sri.Tomy Kallani and Sri.Oommen Chandy were election agents of the first respondent. When the petitioner has no case that any corrupt practice was committed by the first respondent himself or in the presence of the first respondent or with the consent of the first respondent, and especially when the case of the petitioner is limited to the extend that the said corrupt practice was committed by Sri.Oomen Chandy, who is one of the election agents of the first respondent, and that the said corrupt practice was committed by Sri.Oommen Chandy in the presence of and with the consent and approval of other three election agents of the first respondent, the pleadings relating to the said corrupt practice do not constitute material facts relating to the corrupt practice. Further, it cannot be said that the petitioner has set forth full particulars of any such corrupt practice within the meaning of Section 83 of the Act.

19. Section 45 also gives an indication that there can only be one agent for a candidate at the election. Section 45 of the Act says:

> *"45. Functions of election agents - An election agent may perform such functions in connection with the election as are authorised by or under this Act to be performed by an election agent."*

20. As per Rule 12 of The Conduct of Election Rules 1961, any appointment of an election agent under Section 40 shall be made in Form No. 8 and notice of such appointment shall be given by forwarding the same in duplicate to the Returning Officer who shall return one copy thereof, to the election agent after affixing his seal and signature in it, in token of his approval of the appointment.

21. Therefore, it is crystal clear that the Act postulates any one person as an election agent who has to be appointed by the candidate at the election and in token of the approval of the appointment by the returning officer, one copy of Form 8 of such appointment under Section 40 shall be obtained by the candidate from the Returning Officer with the seal and signature of the Returning Officer in token of his approval of the appointment as per Rule 12(1) of The Conduct of Election Rules 1961. The terms "Chief Election Agent" and "Main Election Agent" are alien to the provisions of the Act as well as The Conduct of Election Rules 1961. It seems that by naming four persons as Election Agents, the petitioner has pleaded that Sri. Thomas Chazhikkadan was the Chief Election Agent and Sri.Oommen Chandy was the Main Election Agent. When those terms are not approved by the Act or The Conduct of Election Rules, it cannot be said that the pleadings are specific, and it cannot be said that in such case, the full particulars of the alleged corrupt practice have been pleaded within the meaning of Section 83(1)(b) of the Act.

22. Section 46 deals with the appointment of polling agents. As per the said provision, there can be more polling agents than one. The petitioner has no case that any of the aforesaid persons were appointed as polling agent by the candidate. As per Section 100(1)(b), the High Court shall declare the election of the returned candidate to be void if the High Court is of the opinion that any corrupt practice has been committed by the returned candidate or his election agent or by any other persons with the consent of the returned candidate or his election agent. There is no averment or allegation that the first respondent has committed any corrupt practice by himself. At the same time, it is alleged that one of the election agents of the first respondent has committed corrupt practice with the consent of the other election agents of the first respondent. When there cannot be more than one election agent to the first respondent at the election, it cannot be said that one of the election agents has committed corrupt practice.

23. As per Section 123(1)(A) bribery that is to say any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever with the object, directly or indirectly of inducing an elector to vote or refrain from voting at an election, is a corrupt practice. There is no averment or allegation that the first respondent has made any gift, offer or promise withing the meaning of Section 123(1) A of the Act. If such a gift, offer or promise was made by the agent of the candidate or any other person with the consent of the candidate or his election agent, it could also be a corrupt practice. As per the Explanation to Section 123(8) of the Act, the expression "Agent" includes an election agent, a polling agent and any person who is held to be acted as an agent in connection with the election with the consent of the candidate. When there cannot be more than one election agent and such an election agent has to be appointed by the candidate through Form 8 as per Section 40 of the Act read with Rule 12 of The Conduct of Election Rules, a candidate should obtain approval of the returning officer for such appointment, there is no sufficient pleading in the election petition as to who is the election agent. Therefore, there is nothing to show that any of the aforesaid persons is the election agent of the first respondent. Admittedly, it is not pleaded that any of the said persons was the polling agent of the petitioner. It has not been pleaded that Sri. Oommen Chandy has made the so called speeches as an agent in connection with the election of the first respondent with the consent of the first respondent within the meaning of Explanation (1) to Section 123(8) of the Act.

24. From the discussions made above, it has clearly come out that the pleadings relating to the alleged corrupt practice are totally vague and not specific. All material particulars regarding the alleged corrupt practice have not been set forth in the election petition. The petitioner has failed to set forth the full particulars of any such corrupt practice within the meaning of Section 83(1)(b) of the Act.

25. The learned Senior Counsel for the first respondent has invited the attention of this Court to the decision in ***Hari Shanker v. Sonia Gandhi****[(2001) 8 SCC 233]* wherein it was held in paragraphs 22, 23 and 24 as follows:

> *"We now proceed to examine whether the pleadings of any of the two election-petitioners disclose any cause of action and raise a triable issue which should have been put to trial.*
>
> *Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. See Samant N. Balakrishna, etc. v. George Fernandez, (1969) 3 SCR 603; Jitender Bahadur Singh v. Krishna Behari, (1969) 2 SCC 433. Merely quoting the words of the Section*

like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V. S. Achuthanandan v. P. J. Francis, (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

Based on the decision noted supra, the learned Senior Counsel for the first respondent has argued that the election petition does not disclose any cause of action regarding the alleged corrupt practice and therefore, the election petition is liable to be rejected.

26. In ***Nandiesha Reddy v. Kavitha Mahesh****[(2011) 7 SCC 721]* it was held in paragraph 37 as follows:

"The phrase "material facts" as used in Section 83 (1) (a) of the Act or Order 6 Rule 2 of the Code of Civil Procedure has not been defined in the Act or the Code of Civil Procedure. In our opinion all specific and primary facts which are required to be proved by a party for the relief claimed are material facts. It is settled legal position that all material facts must be pleaded by the party on which the relief is founded. Its object and purpose is to enable the contesting party to know the case which it has to meet. An election petition can be summarily dismissed if it does not furnish the material facts to give rise to a cause of action. However, what are the material facts always depend upon the facts of each case and no rule of universal application is possible to be laid down in this regard."

On the basis of the decision noted *supra*, the learned Senior Counsel for the first respondent has argued that as the petitioner has failed to furnish material particulars to give rise to a cause of action, the election petition is liable to be summarily dismissed.

27. In ***Azhar Hussain v. Rajiv Gandhi****[(1986) Suppl. SCC 315]*. It was held that the mere fact that Section 83 of the Act does not find a place in Section 86 of the Act does not mean that powers under the CPC cannot be exercised under Section 87 of the Act. However, election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure 1908 to the trial of the suits and a suit which does not furnish cause of action can be dismissed. The same was the view taken by the Apex Court in ***Hardwari Lal v. Kanwal Singh***[*(1972) 1 SCC 214]*.

28. In ***Samant N. Balkrishna v. George Fernandez*** *[(1969) 3 SCC 238]* the Apex Court has held that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In ***Udhav Singh v. Madhav Rao Schindia****[(1977) 1 SCC 511],* the Apex Court has held that all the primary facts which must be proved by a party to establish a cause of action or that his defence are material facts, and that, in the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition, therefore can be and must be dismissed, if it suffers from any such vice.

29. Over and above all these, the learned Senior Counsel for the first respondent has pointed out that the contents of the affidavit filed in Form 25 by the petitioner in support of the election petition are contradictory to the pleadings set forth in the election petition. On a perusal of the affidavit, it seems that the clear case of the petitioner therein is that:

"The corrupt practice of bribery committed by the Election Agent of the first respondent, Sri.Oommen Chandy, the Hon'ble Chief Minister of Kerala with the consent of the Chief Election Agent of the first respondent Sri. Thomas Chazhikkadan, his two other agents Sri.Mons Joseph and Tomy Kallani referred to above and making an offer and promise amounting to gratification to the voters with the object of directly or indirectly inducing the electors of No.14 Kottayam Parliamentary Constituency to vote in the elections from that constituency to the Parliament by announcing that the Government have decided to cancel the High Speed Train Project and therefore, the call made by a

section of the voters and highlighted in the election petition to boycott the election shall be withdrawn and the receipt of such a gratification by the voters as a motive or reward for voting in the elections as an inducement to the voters to vote in the election. The aforesaid corrupt practice was committed by one of the election agents of the 1st respondent, Sri.Oommen Chandy, the Hon'ble Chief Minister in the election meetings in Kaduthuruthy junction held on the 30th of March, 2014 shortly after 4 PM, and in the meeting in Neendoor in Ettumanoor on 02.04.2014 at about 6 PM as stated in the election petition."

30. On a perusal of the contents of the election petition and the aforesaid contents of the affidavit in support of the election petition, it is evident that the said contents of the affidavit are contradictory to what is pleaded in the election petition. In the election petition it is pleaded that Sri.Oommen Chandy made the speech as one of the "Agents" of the first respondent and not as the "Election Agent" On this aspect, the learned Senior Counsel for the first respondent has invited my attention to the decision in ***Ravinder Singh v. Janmeja Singh***[*(2000) 8 SC 191*] wherein it was held in paragraph 11 that:

"Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition leveling a charge of corrupt practice is required, by law, to be supported by an affidavit in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for this insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise. In the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial- the defect being of a fatal nature."

31. From the discussions made above, it has clearly come out that the petitioner has failed to furnish specific particulars, material particulars and full particulars of the alleged corrupt practice. Matters being so, the election petition does not disclose a correct cause of action with regard to the alleged corrupt practice. Therefore, the election petition is liable to be weeded out at the threshold itself as not maintainable in the eye of law and therefore, the same is only to be dismissed with costs, and I do so.

In the result, this Election Petition is dismissed with costs to the first respondent.

All the interlocutory applications in this Election Petition are closed.

Sd/-
B. KEMAL PASHA, JUDGE

[No. 82/KL-HP/5/2014]
By Order,
TAPAS KUMAR, Sr. Principal Secy.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE A:	**TRUE COPY OF THE PHOTOGRAPH EVIDENCING THE ERECTION OF THE FLEX BOARD.**
ANNEXURE A1:	**TRUE ENGLISH TRANSLATION OF ANNEXURE A DOCUMENT.**
ANNEXURE B:	**TRUE COPY OF THE PHOTOGRAPH EVIDENCING THE ERECTION OF THE FLEX BOARD.**
ANNEXURE B1:	**TRUE ENGLISH TRANSLATION OF ANNEXURE B DOCUMENT.**
ANNEXURE C:	**TRUE COPY OF THE POSTER PASTED IN DIFFERENT PARTS OF THE KOTTAYAM PARLIAMENTARY CONSTITUENCY.**

ANNEXURE C1:	**TRUE ENGLISH TRANSLATION OF ANNEXURE C DOCUMENT.**
ANNEXURE D:	**TRUE COPY OF THE NEWS REPORT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 31.03.2014.**
ANNEXURE D1:	**TRUE ENGLISH TRANSLATION OF ANNEXURE D DOCUMENT.**
ANNEXURE E:	**TRUE COPY OF THE NEWS REPORT APPEARED IN THE MADHYAMAM DAILY DATED 31.03.2014.**
ANNEXURE E1:	**TRUE ENGLISH TRANSLATION OF ANNEXURE E DOCUMENT.**
ANNEXURE F:	**TRUE COPY OF THE NEWS REPORT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 03.04.2014.**
ANNEXURE F1:	**TRUE ENGLISH TRANSLATION OF ANNEXURE F DOCUMENT.**
ANNEXURE G:	**TRUE COPY OF THE NEWS REPORT APPEARED IN MALAYALA MANORAMA DAILY DATED 04.04.2014 IN PAGE NO.2.**
ANNEXURE G1:	**TRUE ENGLISH TRANSLATION OF ANNEXURE G DOCUMENT.**
ANNEXURE H:	**TRUE COPY OF THE PETITION SENT TO THE CHIEF ELECTION COMMISSIONER, NEW DELHI BY THE CONVENOR OF THE HIGH SPEED RAIL PROJECT ACTION COMMITTEE ALONG WITH THE EXHIBITS.**
ANNEXURE I:	**TRUE COPY OF THE NEWS REPORT APPEARED IN THE MALAYALA MANORAMA DAILY DATED 25.04.2014.**
ANNEXURE I.1:	**TRUE ENGLISH TRANSLATION OF ANNEXURE I DOCUMENT.**
ANNEXURE J:	**TRUE COPY OF THE CHALAN RECEIPT NO.153 DATED 27.06.2014.**

RESPONDENT(S)' ANNEXURES : **NIL**

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